

ASSEMBLY BILL

No. 2072

Introduced by Assembly Member Nazarian

February 20, 2014

An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2072, as introduced, Nazarian. Housing density bonus.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus and other incentives or concessions for the production of lower income housing units or the donation of land within the development if the developer, among other things, agrees to construct a specified percentage of units for very low, low-, or moderate-income households or qualifying residents.

Existing law establishes certain procedures for application for a density bonus and other incentives or concessions, and requirements on the city, county, or city and county relating to the application review process and the provision of those bonuses and incentives or concessions.

This bill would make technical, nonsubstantive changes to these provisions of law.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 65915 of the Government Code is amended to read:

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant with incentives or concessions for the production of housing units and child care facilities as prescribed in this section. ~~All cities, counties, or cities and counties~~ *Each city, county, and city and county* shall adopt an ordinance that specifies how compliance with this section ~~will~~ *shall* be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from ~~complying~~ *compliance* with this section.

(b) (1) A city, county, or city and county shall grant one density bonus, ~~in the amount of which shall be as specified in subdivision (f), and incentives or concessions, as described in subdivision (d),~~ when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development as defined in Section 4100 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus

1 shall be awarded on the basis of subparagraph (A), (B), (C), or (D)
2 of paragraph (1).

3 (3) For the purposes of this section, “total units” or “total
4 dwelling units” does not include units added by a density bonus
5 awarded pursuant to this section or any local law granting a greater
6 density bonus.

7 (c) (1) An applicant shall agree to, and the city, county, or city
8 and county shall ensure, continued affordability of all low- and
9 very low income units that qualified the applicant for the award
10 of the density bonus for 30 years or a longer period of time if
11 required by the construction or mortgage financing assistance
12 program, mortgage insurance program, or rental subsidy program.
13 Rents for the lower income density bonus units shall be set at an
14 affordable rent as defined in Section 50053 of the Health and Safety
15 Code. Owner-occupied units shall be available at an affordable
16 housing cost as defined in Section 50052.5 of the Health and Safety
17 Code.

18 (2) An applicant shall agree to, and the city, county, or city and
19 county shall ensure that, the initial occupant of the
20 moderate-income units that are directly related to the receipt of
21 the density bonus in the common interest development, as defined
22 in Section 4100 of the Civil Code, are persons and families of
23 moderate income, as defined in Section 50093 of the Health and
24 Safety Code, and that the units are offered at an affordable housing
25 cost, as that cost is defined in Section 50052.5 of the Health and
26 Safety Code. The local government shall enforce an equity sharing
27 agreement, unless it is in conflict with the requirements of another
28 public funding source or law. The following apply to the equity
29 sharing agreement:

30 (A) Upon resale, the seller of the unit shall retain the value of
31 any improvements, the downpayment, and the seller’s proportionate
32 share of appreciation. The local government shall recapture any
33 initial subsidy, as defined in subparagraph (B), and its proportionate
34 share of appreciation, as defined in subparagraph (C), which
35 amount shall be used within five years for any of the purposes
36 described in subdivision (e) of Section 33334.2 of the Health and
37 Safety Code that promote home ownership.

38 (B) For purposes of this subdivision, the local government’s
39 initial subsidy shall be equal to the fair market value of the home
40 at the time of initial sale minus the initial sale price to the

1 moderate-income household, plus the amount of any downpayment
2 assistance or mortgage assistance. If upon resale the market value
3 is lower than the initial market value, then the value at the time of
4 the resale shall be used as the initial market value.

5 (C) For purposes of this subdivision, the local government's
6 proportionate share of appreciation shall be equal to the ratio of
7 the local government's initial subsidy to the fair market value of
8 the home at the time of initial sale.

9 (d) (1) An applicant for a density bonus pursuant to subdivision
10 (b) may submit to a city, county, or city and county a proposal for
11 the specific incentives or concessions that the applicant requests
12 pursuant to this section, and may request a meeting with the city,
13 county, or city and county. The city, county, or city and county
14 shall grant the concession or incentive requested by the applicant
15 unless the city, county, or city and county makes a written finding,
16 based upon substantial evidence, of any of the following:

17 (A) The concession or incentive is not required in order to
18 provide for affordable housing costs, as defined in Section 50052.5
19 of the Health and Safety Code, or for rents for the targeted units
20 to be set as specified in subdivision (c).

21 (B) The concession or incentive would have a specific adverse
22 impact, as defined in paragraph (2) of subdivision (d) of Section
23 65589.5, upon *the* public health and safety or the physical
24 environment or on any real property that is listed in the California
25 Register of Historical Resources and for which there is no feasible
26 method to satisfactorily mitigate or avoid the specific adverse
27 impact without rendering the development unaffordable to low-
28 and moderate-income households.

29 (C) The concession or incentive would be contrary to state or
30 federal law.

31 (2) The applicant shall receive the following number of
32 incentives or concessions:

33 (A) One incentive or concession for projects that include at least
34 10 percent of the total units for lower income households, at least
35 5 percent for very low income households, or at least 10 percent
36 for persons and families of moderate income in a common interest
37 development.

38 (B) Two incentives or concessions for projects that include at
39 least 20 percent of the total units for lower income households, at
40 least 10 percent for very low income households, or at least 20

1 percent for persons and families of moderate income in a common
2 interest development.

3 (C) Three incentives or concessions for projects that include at
4 least 30 percent of the total units for lower income households, at
5 least 15 percent for very low income households, or at least 30
6 percent for persons and families of moderate income in a common
7 interest development.

8 (3) The applicant may initiate judicial proceedings if the city,
9 county, or city and county refuses to grant a requested density
10 bonus, incentive, or concession. If a court finds that the refusal to
11 grant a requested density bonus, incentive, or concession is in
12 violation of this section, the court shall award the plaintiff
13 reasonable attorney's fees and costs of *the* suit. Nothing in this
14 subdivision shall be ~~interpreted~~ *construed* to require a local
15 government to grant an incentive or concession that has a specific,
16 adverse impact, as defined in paragraph (2) of subdivision (d) of
17 Section 65589.5, upon health, safety, or the physical environment,
18 and for which there is no feasible method to satisfactorily mitigate
19 or avoid the specific adverse impact. Nothing in this subdivision
20 shall be interpreted to require a local government to grant an
21 incentive or concession that would have an adverse impact on any
22 real property that is listed in the California Register of Historical
23 Resources. The city, county, or city and county shall establish
24 procedures for carrying out this section, that shall include
25 legislative body approval of the means of compliance with this
26 section.

27 (e) (1) In no case may a city, county, or city and county apply
28 any development standard that will have the effect of physically
29 precluding the construction of a development meeting the criteria
30 of subdivision (b) at the densities or with the concessions or
31 incentives permitted by this section. An applicant may submit to
32 a city, county, or city and county a proposal for the waiver or
33 reduction of development standards that will have the effect of
34 physically precluding the construction of a development meeting
35 the criteria of subdivision (b) at the densities or with the
36 concessions or incentives permitted under this section, and may
37 request a meeting with the city, county, or city and county. If a
38 court finds that the refusal to grant a waiver or reduction of
39 development standards is in violation of this section, the court
40 shall award the plaintiff reasonable attorney's fees and costs of

1 suit. ~~Nothing in this~~ This subdivision shall *not* be interpreted
 2 *construed* to require a local government to waive or reduce
 3 development standards if the waiver or reduction would have a
 4 specific, adverse impact, as defined in paragraph (2) of subdivision
 5 (d) of Section 65589.5, upon health, safety, or the physical
 6 environment, and ~~for which there is no~~ *it is not feasible method*
 7 to satisfactorily mitigate or avoid the specific adverse impact.
 8 ~~Nothing in this~~ This subdivision shall *not* be interpreted *construed*
 9 to require a local government to waive or reduce development
 10 standards that would have an adverse impact on any real property
 11 that is listed in the California Register of Historical Resources, or
 12 to grant any waiver or reduction that would be contrary to state or
 13 federal law.

14 (2) A proposal for the waiver or reduction of development
 15 standards pursuant to this subdivision shall ~~neither~~ *not* reduce ~~nor~~
 16 *or* increase the number of incentives or concessions to which the
 17 applicant is entitled pursuant to subdivision (d).

18 (f) For the purposes of this chapter, “density bonus” means a
 19 density increase over the otherwise maximum allowable residential
 20 density as of the date of application by the applicant to the city,
 21 county, or city and county. The applicant may elect to accept a
 22 lesser percentage of density bonus. The amount of density bonus
 23 to which the applicant is entitled shall vary according to the amount
 24 by which the percentage of affordable housing units exceeds the
 25 percentage established in subdivision (b).

26 (1) For housing developments meeting the criteria of
 27 subparagraph (A) of paragraph (1) of subdivision (b), the density
 28 bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5

20

35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21

1	27	22
2	28	23
3	29	24
4	30	25
5	31	26
6	32	27
7	33	28
8	34	29
9	35	30
10	36	31
11	37	32
12	38	33
13	39	34
14	40	35

15
16 (5) All density calculations resulting in fractional units shall be
17 rounded up to the next whole number. The granting of a density
18 bonus shall not be interpreted, in and of itself, to require a general
19 plan amendment, local coastal plan amendment, zoning change,
20 or other discretionary approval.

21 (g) (1) When an applicant for a tentative subdivision map,
22 parcel map, or other residential development approval donates
23 land to a city, county, or city and county in accordance with this
24 subdivision, the applicant shall be entitled to a 15-percent increase
25 above the otherwise maximum allowable residential density for
26 the entire development, as follows:

27		
28	Percentage Very Low Income	Percentage Density Bonus
29	10	15
30	11	16
31	12	17
32	13	18
33	14	19
34	15	20
35	16	21
36	17	22
37	18	23
38	19	24
39	20	25
40	21	26

1	22	27
2	23	28
3	24	29
4	25	30
5	26	31
6	27	32
7	28	33
8	29	34
9	30	35

10

11 (2) This increase shall be in addition to any increase in density
12 mandated by subdivision (b), up to a maximum combined mandated
13 density increase of 35 percent if an applicant seeks an increase
14 pursuant to both this subdivision and subdivision (b). All density
15 calculations resulting in fractional units shall be rounded up to the
16 next whole number. ~~Nothing in this~~ This subdivision shall *not* be
17 construed to enlarge or diminish the authority of a city, county, or
18 city and county to require a developer to donate land as a condition
19 of development. An applicant shall be eligible for the increased
20 density bonus described in this subdivision if all of the following
21 conditions are met:

22 (A) The applicant donates and transfers the land no later than
23 the date of approval of the final subdivision map, parcel map, or
24 residential development application.

25 (B) The developable acreage and zoning classification of the
26 land being transferred are sufficient to permit construction of units
27 affordable to very low income households in an amount not less
28 than 10 percent of the number of residential units of the proposed
29 development.

30 (C) The transferred land is at least one acre in size or of
31 sufficient size to permit development of at least 40 units, has the
32 appropriate general plan designation, is appropriately zoned with
33 appropriate development standards for development at the density
34 described in paragraph (3) of subdivision (c) of Section 65583.2,
35 and is or will be served by adequate public facilities and
36 infrastructure.

37 (D) The transferred land shall have all of the permits and
38 approvals, other than building permits, necessary for the
39 development of the very low income housing units on the
40 transferred land, not later than the date of approval of the final

1 subdivision map, parcel map, or residential development
2 application, except that the local government may subject the
3 proposed development to subsequent design review to the extent
4 authorized by subdivision (i) of Section 65583.2 if the design is
5 not reviewed by the local government prior to the time of transfer.

6 (E) The transferred land and the affordable units shall be subject
7 to a deed restriction ensuring continued affordability of the units
8 consistent with paragraphs (1) and (2) of subdivision (c), which
9 shall be recorded on the property at the time of the transfer.

10 (F) The land is transferred to the local agency or to a housing
11 developer approved by the local agency. The local agency may
12 require the applicant to identify and transfer the land to the
13 developer.

14 (G) The transferred land shall be within the boundary of the
15 proposed development or, if the local agency agrees, within
16 one-quarter mile of the boundary of the proposed development.

17 (H) A proposed source of funding for the very low income units
18 shall be identified not later than the date of approval of the final
19 subdivision map, parcel map, or residential development
20 application.

21 (h) (1) When an applicant proposes to construct a housing
22 development that conforms to the requirements of subdivision (b)
23 and includes a child care facility that will be located on the
24 premises of, as part of, or adjacent to, the project, the city, county,
25 or city and county shall grant either of the following:

26 (A) An additional density bonus that is an amount of square
27 feet of residential space that is equal to or greater than the amount
28 of square feet in the child care facility.

29 (B) An additional concession or incentive that contributes
30 significantly to the economic feasibility of the construction of the
31 child care facility.

32 (2) The city, county, or city and county shall require, as a
33 condition of approving the housing development, that the following
34 occur:

35 (A) The child care facility shall remain in operation for a period
36 of time that is as long as or longer than the period of time during
37 which the density bonus units are required to remain affordable
38 pursuant to subdivision (c).

39 (B) Of the children who attend the child care facility, the
40 children of very low income households, lower income households,

1 or families of moderate income shall equal a percentage that is
2 equal to or greater than the percentage of dwelling units that are
3 required for very low income households, lower income
4 households, or families of moderate income pursuant to subdivision
5 (b).

6 (3) Notwithstanding any requirement of this subdivision, a city,
7 county, or city and county shall not be required to provide a density
8 bonus or concession for a child care facility if it finds, based upon
9 substantial evidence, that the community has adequate child care
10 facilities.

11 (4) “Child care facility,” as used in this section, means a child
12 day care facility other than a family day care home, including, but
13 not limited to, infant centers, preschools, extended day care
14 facilities, and schoolage child care centers.

15 (i) “Housing development,” as used in this section, means a
16 development project for five or more residential units. For the
17 purposes of this section, “housing development” also includes a
18 subdivision or common interest development, as defined in Section
19 4100 of the Civil Code, approved by a city, county, or city and
20 county and consists of residential units or unimproved residential
21 lots and either a project to substantially rehabilitate and convert
22 an existing commercial building to residential use or the substantial
23 rehabilitation of an existing multifamily dwelling, as defined in
24 subdivision (d) of Section 65863.4, where the result of the
25 rehabilitation would be a net increase in available residential units.
26 For the purpose of calculating a density bonus, the residential units
27 shall be on contiguous sites that are the subject of one development
28 application, but do not have to be based upon individual
29 subdivision maps or parcels. The density bonus shall be permitted
30 in geographic areas of the housing development other than the
31 areas where the units for the lower income households are located.

32 (j) The granting of a concession or incentive shall not be
33 interpreted, in and of itself, to require a general plan amendment,
34 local coastal plan amendment, zoning change, or other discretionary
35 approval. This provision is declaratory of existing law.

36 (k) For the purposes of this chapter, concession or incentive
37 means any of the following:

38 (1) A reduction in site development standards or a modification
39 of zoning code requirements or architectural design requirements
40 that exceed the minimum building standards approved by the

1 California Building Standards Commission as provided in Part 2.5
2 (commencing with Section 18901) of Division 13 of the Health
3 and Safety Code, including, but not limited to, a reduction in
4 setback and square footage requirements and in the ratio of
5 vehicular parking spaces that would otherwise be required that
6 results in identifiable, financially sufficient, and actual cost
7 reductions.

8 (2) Approval of mixed-use zoning in conjunction with the
9 housing project if commercial, office, industrial, or other land uses
10 will reduce the cost of the housing development and if the
11 commercial, office, industrial, or other land uses are compatible
12 with the housing project and the existing or planned development
13 in the area where the proposed housing project will be located.

14 (3) Other regulatory incentives or concessions proposed by the
15 developer or the city, county, or city and county that result in
16 identifiable, financially sufficient, and actual cost reductions.

17 (l) Subdivision (k) does not limit or require the provision of
18 direct financial incentives for the housing development, including
19 the provision of publicly owned land, by the city, county, or city
20 and county, or the waiver of fees or dedication requirements.

21 (m) This section shall not be construed to supersede or in any
22 way alter or lessen the effect or application of the California
23 Coastal Act of 1976 (Division 20 (commencing with Section
24 30000) of the Public Resources Code).

25 (n) If permitted by local ordinance, ~~nothing in~~ this section shall
26 *not* be construed to prohibit a city, county, or city and county from
27 granting a density bonus greater than what is described in this
28 section for a development that meets the requirements of this
29 section or from granting a proportionately lower density bonus
30 than what is required by this section for developments that do not
31 meet the requirements of this section.

32 (o) For purposes of this section, the following definitions shall
33 apply:

34 (1) "Development standard" includes a site or construction
35 condition, including, but not limited to, a height limitation, a
36 setback requirement, a floor area ratio, an onsite open-space
37 requirement, or a parking ratio that applies to a residential
38 development pursuant to any ordinance, general plan element,
39 specific plan, charter, or other local condition, law, policy,
40 resolution, or regulation.

1 (2) “Maximum allowable residential density” means the density
2 allowed under the zoning ordinance and land use element of the
3 general plan, or if a range of density is permitted, means the
4 maximum allowable density for the specific zoning range and land
5 use element of the general plan applicable to the project. Where
6 the density allowed under the zoning ordinance is inconsistent
7 with the density allowed under the land use element of the general
8 plan, the general plan density shall prevail.

9 (p) (1) Upon the request of the developer, no city, county, or
10 city and county shall require a vehicular parking ratio, inclusive
11 of handicapped and guest parking, of a development meeting the
12 criteria of subdivision (b), that exceeds the following ratios:

13 (A) Zero to one bedroom: one onsite parking space.

14 (B) Two to three bedrooms: two onsite parking spaces.

15 (C) Four and more bedrooms: two and one-half parking spaces.

16 (2) If the total number of parking spaces required for a
17 development is other than a whole number, the number shall be
18 rounded up to the next whole number. For purposes of this
19 subdivision, a development may provide “onsite parking” through
20 tandem parking or uncovered parking, but not through onstreet
21 parking.

22 (3) This subdivision shall apply to a development that meets
23 the requirements of subdivision (b) but only at the request of the
24 applicant. An applicant may request parking incentives or
25 concessions beyond those provided in this subdivision pursuant
26 to subdivision (d).